

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

---

LAMARTINE PIERRE JR., et al.,

Plaintiffs,

v.

HEALTHY BEVERAGE LLC d/b/a THE  
HEALTHY BEVERAGE COMPANY

Defendant.

---

CIVIL ACTION NO. 2:20-CV-04934-GJP

JURY TRIAL DEMANDED

**DEFENDANT’S NOTICE OF SUPPLEMENTAL AUTHORITY**

In further support of its Motion to Dismiss Plaintiffs’ Amended Complaint (ECF # 19), Defendant Healthy Beverage LLC d/b/a The Healthy Beverage Company respectfully submits the attached Opinion and Order in *Mazella v. The Coca-Cola Company*, 7-20-cv-0523-NSR (S.D.N.Y. July 12, 2021) (hereafter the “Opinion.”) granting defendant’s motion to dismiss and closing the case. *Mazella* is very similar factually to the instant case, and the court’s dismissal is based on the same legal principles urged by Defendant Healthy Beverage in this matter.

In *Mazella*, plaintiff alleged Coca-Cola’s Gold Peak® iced tea is labeled “Slightly Sweet” and leads reasonable consumers to believe the product is low in sugar. Opinion at 1. Plaintiff alleged the iced tea product’s front label claim of “Slightly Sweet” is misleading because it is a “low sugar” claim about the amount of sugar in the product, yet the product includes more than .5 grams of sugar. *Id.* at 2. Plaintiff claimed Coca-Cola’s “Slightly Sweet” product is sold at a premium price compared to other similar products. *Id.* The *Mazella* plaintiff alleged various causes of action: statutory claims under GBL §§ 349 and 350; claims for negligent misrepresentation; breach of express and implied warranties; fraud, and unjust enrichment. *Id.* at

3. Defendant Coca-Cola moved to dismiss all of plaintiff's claims for failure to plausibly allege that the product is materially misleading. *Id.* at 3-4.

The Court granted Coca-Cola's motion. *Id.* at 16. The Court held that "Slightly Sweet" is unlikely to "mislead a consumer acting reasonably into believing" that the product is low in sugar. *Id.* at 6 (internal quotations omitted). The Court emphasized, as Defendant does in the instant case, that "[c]ontext is crucial," finding there could be no deception because the product label includes a Nutrition Fact Panel that lists sugar and calorie counts in the beverage. *Id.* at 6-7 (quoting *Geffner v. Coca-Cola Co.*, 928 F.3d 198, 200-01 (2d Cir. 2019)); *see also id.* at 7 (observing that "[c]ourts have found that the inclusion of the Nutrition Fact Panel ensures that there is no ambiguity as the amount of calories and sugar in a product, and, thus, no misleading claim.") (citing *Melendez v. ONE Brands, LLC*, 2020 WL 1283793, at \*7 (E.D.N.Y. 2020)). The Court concluded that plaintiff could not state a claim on any of her causes of action because she could not plausibly allege the statement "Slightly Sweetened" is materially misleading. *Id.* at 5-16. The Court granted the motion in its entirety, dismissed all of plaintiff's claims, and directed the Clerk of Court to close the case. *Id.* at 16.

Respectfully submitted,

FOX ROTHSCILD LLP

Dated: July 13, 2021

/s/ Clair E. Wischusen

Michael Eidel, Esquire

Clair E. Wischusen, Esquire

Attorney I.D. Nos. 94278; 306752

2000 Market Street, 20<sup>th</sup> Floor

Philadelphia, PA 19103-3222

[meidel@foxrothschild.com](mailto:meidel@foxrothschild.com)

[cwischusen@foxrothschild.com](mailto:cwischusen@foxrothschild.com)

Phone: (215) 299-2000

Fax: (215) 299-2150

*Attorneys for Defendant Healthy Beverage  
LLC d/b/a The Healthy Beverage Company*

**CERTIFICATE OF SERVICE**

I, Clair E. Wischusen, Esquire, certify that on July 13, 2021, I served a true and correct copy of the foregoing Defendant's Notice of Supplemental Authority on the following counsel of record via the Court's Case Management/Electronic Case Filing (CM/ECF) notification of electronic filing system:

Charles E. Schaffer, Esq.  
David C. Magagna Jr., Esq.  
LEVIN, SEDRAN & BERMAN LLP  
510 Walnut Street, Suite 500  
Philadelphia, PA 19106  
[cschaffer@lfsblaw.com](mailto:cschaffer@lfsblaw.com)  
[dmagagna@lfsblaw.com](mailto:dmagagna@lfsblaw.com)

Gary E. Mason, Esq.  
MASON LIETZ & KLINGER LLP  
5101 Wisconsin Avenue NW, Suite 305  
Washington, DC 20016  
[gmason@masonllp.com](mailto:gmason@masonllp.com)

Gary M. Klinger, Esq.  
MASON LIETZ & KLINGER LLP  
227 W. Monroe Street, Suite 2100  
Chicago, IL 60630  
[gklinger@masonllp.com](mailto:gklinger@masonllp.com)

Jeffrey S. Goldenberg, Esq.  
GOLDENBERG SCHNEIDER LPA  
35 E. 7<sup>th</sup> St. STE. 600  
Cincinnati, OH 45202  
[jgoldenbergs@gs-legal.com](mailto:jgoldenbergs@gs-legal.com)

*Attorneys for Plaintiffs*

/s/ Clair E. Wischusen  
Clair E. Wischusen, Esquire